

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2583**

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**Introduced by Assembly Member Frazier**

February 19, 2016

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An act to amend ~~Section 85057.5 of~~, Sections 85057.5, 85086, 85088, 85089, 85320, and 85321 of, to amend the heading of Chapter 2 (commencing with Section 85320) of Part 4 of Division 35 of, and to add Section 85053.5 to, ~~and to repeal Section 85085 of~~, the Water Code, relating to the Sacramento-San Joaquin Delta.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2583, as amended, Frazier. Sacramento-San Joaquin Delta Reform Act of 2009.

Existing law, the Sacramento-San Joaquin Delta Reform Act of 2009, establishes the Delta Stewardship Council and requires the council to develop, adopt, and commence implementation of a comprehensive management plan for the Delta, known as the Delta Plan. *The Delta Plan is required to further the coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Delta ecosystem. The act requires the council to consider the Bay Delta Conservation Plan (BDCP) for inclusion in the Delta Plan and requires the incorporation of the BDCP into the Delta Plan if the BDCP meets certain requirements.*

This bill would add a definition of the California Water Fix to the act. *This bill would eliminate certain provisions applicable to the BDCP and would revise other provisions to instead refer to a new Delta water conveyance project for the purpose of exporting water. This bill would require new Delta water conveyance infrastructure to be considered*

*as interdependent parts of a system and to be operated in a way that maximizes benefits for each of the coequal goals.*

The act requires a state or local public agency that proposes to undertake a covered action that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan prior to taking those actions. The act defines the term “covered action” to mean a plan, program, or project, as prescribed.

*This bill would delete certain exclusions relating to the ~~Bay-Delta Conservation Plan~~ BDCP from the definition of a covered action. This bill would prohibit any certification of consistency for a new Delta water conveyance project unless specified requirements are met.*

~~The act requires the Department of Water Resources to coordinate with the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and the State Lands Commission efforts to cooperate with the United States Bureau of Reclamation to construct and implement the Two-Gates Fish Protection Demonstration Project by December 1, 2010, to evaluate the effectiveness of the Three Mile Slough Barrier project, to expeditiously move ahead with certain near term actions, and to assist in implementing early action ecosystem restoration projects.~~

~~This bill would eliminate these requirements.~~

*Under the act, until the State Water Resources Control Board issues an order approving a change in the point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a certain point on the Sacramento River the Department of Water Resources is prohibited from commencing construction of any diversion, conveyance, or other facility necessary to divert and convey water pursuant to the change in point of diversion.*

*This bill would apply the above prohibition to a new point of diversion as well as a change in the point of diversion. This bill would prohibit the board from granting final approval of the requested change in or new point of diversion until the board has completed its update of a specified water quality control plan.*

*The act prohibits construction of a new Delta conveyance facility from being initiated until the persons or entities that contract to receive water from the State Water Project and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts to pay for certain costs required for the construction, operation, and maintenance of the facility*

*and full mitigation of property tax or assessments levied for land use in the construction, location, mitigation, or operation of the facility.*

*This bill would instead prohibit the construction until legally binding financial agreements or contracts are signed by each of the state and federal water contractors that will receive water supplies that commit them to pay for the costs required for the federal Central Valley Project, State Water Project, and any new Delta water conveyance facility, as specified, and full mitigation of property tax or assessments levied for land use in the construction, location, mitigation, operation, or maintenance of the facility.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 85053.5 is added to the Water Code, to
- 2 read:
- 3 85053.5. “California Water Fix” or “Water Fix” means a
- 4 project, within the meaning of Section 21065 of the Public
- 5 Resources Code and subdivision (a) of Section 85057.5, to
- 6 construct new State Water Project conveyance facilities in the
- 7 Delta.
- 8 SEC. 2. Section 85057.5 of the Water Code is amended to read:
- 9 85057.5. (a) “Covered action” means a plan, program, or
- 10 project as defined pursuant to Section 21065 of the Public
- 11 Resources Code that meets all of the following conditions:
- 12 (1) Will occur, in whole or in part, within the boundaries of the
- 13 Delta or Suisun Marsh.
- 14 (2) Will be carried out, approved, or funded by the state or a
- 15 local public agency.
- 16 (3) Is covered by one or more provisions of the Delta Plan.
- 17 (4) Will have a significant impact on achievement of one or
- 18 both of the coequal goals or the implementation of
- 19 government-sponsored flood control programs to reduce risks to
- 20 people, property, and state interests in the Delta.
- 21 (b) “Covered action” does not include any of the following:
- 22 (1) A regulatory action of a state agency.
- 23 (2) Routine maintenance and operation of the State Water
- 24 Project or the federal Central Valley Project.

1 (3) Regional transportation plans prepared pursuant to Section  
2 65080 of the Government Code.

3 (4) A plan, program, project, or activity within the secondary  
4 zone of the Delta that the applicable metropolitan planning  
5 organization pursuant to Section 65080 of the Government Code  
6 has determined is consistent with either a sustainable communities  
7 strategy or an alternative planning strategy that the State Air  
8 Resources Board has determined would, if implemented, achieve  
9 the greenhouse gas emission reduction targets established by that  
10 board pursuant to subparagraph (A) of paragraph (2) of subdivision  
11 (b) of Section 65080 of the Government Code. For purposes of  
12 this paragraph, “consistent with” means consistent with the use  
13 designation, density, building intensity, transportation plan, and  
14 applicable policies specified for the area in the sustainable  
15 communities strategy or the alternative planning strategy, as  
16 applicable, and any infrastructure necessary to support the plan,  
17 program, project, or activity.

18 (5) Routine maintenance and operation of a facility located, in  
19 whole or in part, in the Delta, that is owned or operated by a local  
20 public agency.

21 (6) A plan, program, project, or activity that occurs, in whole  
22 or in part, in the Delta, if both of the following conditions are met:

23 (A) The plan, program, project, or activity is undertaken by a  
24 local public agency that is located, in whole or in part, in the Delta.

25 (B) Either a notice of determination is filed, pursuant to Section  
26 21152 of the Public Resources Code, for the plan, program, project,  
27 or activity by, or the plan, program, project, or activity is fully  
28 permitted by, September 30, 2009.

29 (7) A project within the secondary zone, as defined pursuant to  
30 Section 29731 of the Public Resources Code as of January 1, 2009,  
31 for which a notice of approval or determination pursuant to Section  
32 21152 of the Public Resources Code has been filed before the date  
33 on which the Delta Plan becomes effective.

34 (8) Leases approved by a special district if all of the following  
35 apply:

36 (A) The uses proposed by the lease are authorized by the  
37 applicable general plan and zoning ordinances of the city where  
38 the special district is located.

39 (B) The uses proposed by the lease are approved by the city  
40 where the special district is located and the city complies with

Chapter 3 (commencing with Section 85225) of Part 3, if applicable, prior to approval of the lease by the special district.

(C) The special district complies with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to approving the lease.

(9) (A) Routine dredging activities that are necessary for maintenance of facilities operated by a special district.

(B) For purposes of this paragraph, “routine dredging activities” are limited to the following:

(i) Dredging to maintain the Stockton Deep Water Ship Channel at a depth of 40 feet in the sediment trap at the confluence of the San Joaquin River, between river mile 39.3 to river mile 40.2, and to maintain the remaining Stockton Deep Water Ship Channel at a depth of 35 feet plus two feet of overdredge from river mile 35 to river mile 43.

(ii) Dredging designed to maintain the Sacramento Deep Water Ship Channel at a depth of 30 feet plus two feet of overdredge from river mile 0.0 to river mile 30, and at a depth of 35 feet from river mile 35 to river mile 43.

(C) Except as provided by this subdivision, it is the intent of the Legislature that this exemption shall not be interpreted or treated as changing or modifying current substantive and procedural regulations applicable to the decision to approve dredging operations.

(c) For purposes of this section, “special district” means the Port of Stockton or the Port of West Sacramento.

(d) This section shall not be interpreted to authorize the abrogation of a vested right whether created by statute or by common law.

~~SEC. 3. Section 85085 of the Water Code is repealed.~~

*SEC. 3. Section 85086 of the Water Code is amended to read:*

85086. (a) The board shall establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010.

(b) It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

(c) (1) For the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board shall,

1 pursuant to its public trust obligations, develop new flow criteria  
2 for the Delta ecosystem necessary to protect public trust resources.  
3 In carrying out this section, the board shall review existing water  
4 quality objectives and use the best available scientific information.  
5 The flow criteria for the Delta ecosystem shall include the volume,  
6 quality, and timing of water necessary for the Delta ecosystem  
7 under different conditions. The flow criteria shall be developed in  
8 a public process by the board within nine months of the enactment  
9 of this division. The public process shall be in the form of an  
10 informational proceeding conducted pursuant to Article 3  
11 (commencing with Section 649) of Chapter 1.5 of Division 3 of  
12 Title 23 of the California Code of Regulations, and shall provide  
13 an opportunity for all interested persons to participate. The flow  
14 criteria shall not be considered predecisional with regard to any  
15 subsequent board consideration of a permit, including any permit  
16 in connection with a ~~final BDCP~~ *new Delta water conveyance*  
17 *project for the purpose of exporting water.*

18 (2) Any order approving a change in the point of diversion of  
19 the State Water Project or the federal Central Valley Project from  
20 the southern Delta to a point on the Sacramento River shall include  
21 appropriate Delta flow criteria and shall be informed by the analysis  
22 conducted pursuant to this section. The flow criteria shall be subject  
23 to modification over time based on a science-based adaptive  
24 management program that integrates scientific and monitoring  
25 results, including the contribution of habitat and other conservation  
26 measures, into ongoing Delta water management.

27 (3) Nothing in this section amends or otherwise affects the  
28 application of the board's authority under Part 2 (commencing  
29 with Section 1200) of Division 2 to include terms and conditions  
30 in permits that in its judgment will best develop, conserve, and  
31 utilize in the public interest the water sought to be appropriated.

32 (d) The board shall enter into an agreement with the State Water  
33 Project contractors and the federal Central Valley Project  
34 contractors, who rely on water exported from the Sacramento River  
35 watershed, or a joint powers authority comprised of those  
36 contractors, for reimbursement of the costs of the analysis  
37 conducted pursuant to this section.

38 (e) The board shall submit its flow criteria determinations  
39 pursuant to this section to the council for its information within  
40 30 days of completing the determinations.

1     *SEC. 4. Section 85088 of the Water Code is amended to read:*

2     85088. Until the board issues an order approving a change in  
3     ~~the~~ *or a new* point of diversion of the State Water Project and the  
4     federal Central Valley Project from the southern Delta to a point  
5     on the Sacramento River as specified in subdivision (c) of Section  
6     85086, the department shall not commence construction of any  
7     diversion, conveyance, or other facility necessary to divert and  
8     convey water pursuant to the change in *or new* point of diversion.  
9     *In order to ensure protection of fish and wildlife and in-Delta*  
10    *beneficial uses of the Bay-Delta estuary's waters, final approval*  
11    *by the board of a change or new point of diversion described in*  
12    *this section shall not be granted until the board has completed its*  
13    *update of the 2006 water quality control plan for the Bay-Delta*  
14    *estuary that was initiated with a notice of preparation in 2009.*

15    *SEC. 5. Section 85089 of the Water Code is amended to read:*

16    85089. Construction of a new Delta conveyance facility shall  
17    not be initiated until the persons or entities that contract to receive  
18    water from the State Water Project and the federal Central Valley  
19    Project or a joint powers authority representing those entities have  
20    ~~made arrangements or~~ entered into *legally binding financial*  
21    *agreements or contracts signed by each of the state and federal*  
22    *water contractors that will receive water supplies that commit*  
23    *them to pay for all costs, including reimbursement to the state for*  
24    *any General Fund or water bond funding used to date, that are*  
25    *associated with both of the following:*

26    (a) The costs of the environmental review, planning, design,  
27    construction, and mitigation, including mitigation required pursuant  
28    to Division 13 (commencing with Section ~~21000~~ 21000) of the  
29    Public Resources ~~Code~~, *Code*, required for the construction,  
30    operation, and maintenance of *the federal Central Valley Project,*  
31    *the State Water Project, and any new Delta water conveyance*  
32    *facility.*

33    (b) Full mitigation of property tax or assessments levied by local  
34    governments or special districts for land used in the construction,  
35    location, mitigation, *maintenance*, or operation of *a new Delta*  
36    *conveyance facilities: facility.*

37    *SEC. 6. The heading of Chapter 2 (commencing with Section*  
38    *85320) of Part 4 of Division 35 of the Water Code is amended to*  
39    *read:*

1 CHAPTER 2. ~~BAY DELTA CONSERVATION PLAN~~ DELTA WATER  
2 CONVEYANCE  
3

4 SEC. 7. Section 85320 of the Water Code is amended to read:

5 85320. ~~(a) The Bay Delta Conservation Plan (BDCP) shall be~~  
6 ~~considered for inclusion in the Delta Plan in accordance with this~~  
7 ~~chapter.~~

8 ~~(b) The BDCP shall not be incorporated into the Delta Plan and~~  
9 ~~the public benefits associated with the BDCP shall not be eligible~~  
10 ~~for state funding, unless the BDCP does all of the following:~~

11 ~~(1) Complies with Chapter 10 (commencing with Section 2800)~~  
12 ~~of Division 3 of the Fish and Game Code.~~

13 85320. (a) New Delta water conveyance infrastructure shall  
14 be considered as interdependent parts of a system and operated  
15 in a way that maximizes benefits for each of the coequal goals. A  
16 certification of consistency pursuant to Section 85225 shall not  
17 be made for a new Delta water conveyance project for the purpose  
18 of exporting water unless all of the following requirements are  
19 met:

20 (1) The costs of the design, construction, and operation of the  
21 water conveyance project and the associated mitigation and  
22 maintenance costs are not eligible for state funding. This includes  
23 implementation of existing habitat restoration requirements of the  
24 Department of Fish and Wildlife Longfin Smelt Incidental Take  
25 Permit for the State Water Project Delta operations and the United  
26 States Fish and Wildlife Service and National Oceanic and  
27 Atmospheric Administration National Marine Fisheries Service  
28 biological opinion for the current coordinated operations of the  
29 State Water Project and federal Central Valley Project. These  
30 costs shall be the responsibility of the water agencies that benefit  
31 from the conveyance project.

32 (2) The restrictions on the use of state bond funding for the  
33 acquisition of water pursuant to Section 79709 are met.

34 (3) A legally binding finance agreement is signed by all  
35 beneficiary state and federal water contractors committing them  
36 to pay all water conveyance project construction, mitigation,  
37 operation, maintenance, monitoring, and adaptive management  
38 costs, including reimbursement of local agency property taxes and  
39 assessments pursuant to subdivision (b) of Section 85089.



1     (4) An enforceable mitigation implementation plan and  
2     monitoring and an enforceable monitoring and adaptive  
3     management plan are completed and contain mechanisms, such  
4     as establishing an endowment fund, to ensure adequate and  
5     ongoing funding necessary to mitigate the impacts to communities  
6     and agricultural production in the project area and to carry out  
7     the plans that are finalized and approved by the Department of  
8     Fish and Wildlife. The Delta Independent Science Board shall  
9     perform oversight regarding implementation of these plans for the  
10    purposes of ensuring that implementation of all mitigation  
11    measures required pursuant to Division 13 (commencing with  
12    Section 21000) of the Public Resources Code is roughly  
13    proportional in time and extent to the impact on all resources  
14    analyzed in the environmental impact report and to assess the  
15    effectiveness and adequacy of mitigation performance, funding,  
16    and habitat protection measures. The Delta Independent Science  
17    Board shall annually submit its findings and recommendations to  
18    the department, the council, and the Department of Fish and  
19    Wildlife.

20    (5) The council determines that the proposed changes in Delta  
21    water conveyance are consistent with Section 85021 because each  
22    region that will import water from the Delta using the new Delta  
23    water conveyance demonstrates that it has improved its regional  
24    self-reliance for water by 50 percent over average regional water  
25    supply levels during the period of 2010 to 2015, inclusive, due to  
26    reduced import demand from the Delta through investment in water  
27    use efficiency, water recycling, advanced water technologies, local  
28    and regional water supply projects, and improved regional  
29    coordination of local and regional water supply efforts to the  
30    maximum extent possible.

31    (6) Water exported from the Delta will match more closely the  
32    surplus water supplies available to be exported based on water  
33    year type, compliance with water quality objectives of the water  
34    quality control plan for the Bay-Delta estuary, the coequal goals,  
35    and the Delta water supply protections of Chapter 1 (commencing  
36    with Section 12220) of Part 4.5 of Division 6.

37    (7) Conveyance infrastructure and operations enhance Delta  
38    inflows and outflows by reducing diversions in dry periods  
39    consistent with the beneficial use needs of the Delta ecosystem

1 *and water users and provide net benefits to the ecosystem beyond*  
2 *protecting the ecosystem from further degradation.*

3 *(8) The water conveyance project complies with real-time*  
4 *operational requirements in accordance with Section 85321.*

5 ~~(2) Complies with~~

6 *(9) The requirements of Division 13 (commencing with Section*  
7 *21000) of the Public Resources Code, Code are met, including a*  
8 *comprehensive review and analysis of all of the following:*

9 *(A) A reasonable range of flow criteria, rates of diversion, and*  
10 ~~*other operational criteria required to satisfy the criteria for approval*~~  
11 ~~*of a natural community conservation plan as provided in*~~  
12 ~~*subdivision (a) of Section 2820 of the Fish and Game Code, and*~~  
13 *other operational requirements and flows necessary for recovering*  
14 *the Delta ecosystem and restoring fisheries, in compliance*  
15 *with all of the following, under a reasonable range of hydrologic*  
16 *conditions, which will identify the remaining water available for*  
17 *export and other beneficial uses:*

18 *(i) Section 85031.*

19 *(ii) The federal Central Valley Project Improvement Act (Public*  
20 *Law 102-575).*

21 *(iii) The federal Water Supply, Reliability, and Environmental*  
22 *Improvement Act (Public Law 108-361).*

23 *(iv) The Department of Fish and Wildlife Longfin Smelt*  
24 *Incidental Take Permit for State Water Project Delta operations.*

25 *(v) The United States Fish and Wildlife Service and National*  
26 *Oceanic and Atmospheric Administration National Marine*  
27 *Fisheries Service biological opinion for the current coordinated*  
28 *operations of the State Water Project and federal Central Valley*  
29 *Project.*

30 *(B) A reasonable range of Delta conveyance alternatives,*  
31 *including through-Delta, dual conveyance, and isolated conveyance*  
32 *alternatives and including further capacity and design options of*  
33 *a lined canal, an unlined canal, and pipelines.*

34 *(C) The potential effects of climate change, possible sea level*  
35 *rise up to 55 inches, and possible changes in total precipitation*  
36 *and runoff patterns on the conveyance alternatives and habitat*  
37 *restoration activities considered in the environmental impact report.*

38 *(D) The potential effects on migratory fish and aquatic resources.*

39 *(E) The potential effects on Sacramento River and San Joaquin*  
40 *River flood management.*

1 (F) The resilience and recovery of Delta conveyance alternatives  
2 in the event of catastrophic loss caused by earthquake or flood or  
3 other natural disaster.

4 (G) The potential effects of each Delta conveyance alternative  
5 on Delta water quality.

6 (e)

7 (b) The department shall consult with the council and the Delta  
8 Independent Science Board during the development of ~~the BDCP~~.  
9 *projects to construct new Delta water conveyance facilities for the*  
10 *purpose of exporting water.* The council shall be a responsible  
11 agency in the development of the environmental impact report.  
12 The Delta Independent Science Board shall review the draft  
13 environmental impact report and submit its comments to the  
14 ~~council department, the council,~~ and the Department of Fish and  
15 ~~Game.~~ *Wildlife.*

16 (d) ~~If the Department of Fish and Game approves the BDCP as~~  
17 ~~a natural community conservation plan pursuant to Chapter 10~~  
18 ~~(commencing with Section 2800) of Division 3 of the Fish and~~  
19 ~~Game Code, the council shall have at least one public hearing~~  
20 ~~concerning the incorporation of the BDCP into the Delta Plan.~~

21 (e) ~~If the Department of Fish and Game approves the BDCP as~~  
22 ~~a natural community conservation plan pursuant to Chapter 10~~  
23 ~~(commencing with Section 2800) of Division 3 of the Fish and~~  
24 ~~Game Code and determines that the BDCP meets the requirements~~  
25 ~~of this section, and the BDCP has been approved as a habitat~~  
26 ~~conservation plan pursuant to the federal Endangered Species Act~~  
27 ~~(16 U.S.C. Section 1531 et seq.), the council shall incorporate the~~  
28 ~~BDCP into the Delta Plan. The Department of Fish and Game's~~  
29 ~~determination that the BDCP has met the requirements of this~~  
30 ~~section may be appealed to the council.~~

31 (f)

32 (c) The department, in coordination with the Department of Fish  
33 ~~and Game,~~ *Wildlife,* or any successor agencies *or joint powers*  
34 *authority* charged with ~~BDCP implementation, implementation of~~  
35 *a new Delta water conveyance project,* shall report to the council  
36 ~~on the implementation of the BDCP implementation, funding, and~~  
37 *schedule* at least once a year, including the status *and effectiveness*  
38 *of mitigation measures,* monitoring ~~programs~~ *programs,* and  
39 adaptive management.

40 (g)

1 (d) The council may make recommendations to ~~BDCP~~ for the  
2 purpose of the Delta Habitat Conservation and Conveyance  
3 Program and to the department, other Delta water conveyance  
4 implementing ~~agencies~~ agencies, and joint power authorities  
5 regarding the implementation of the ~~BDCP~~. ~~BDCP~~ implementing  
6 a new Delta water conveyance project. Implementing agencies  
7 shall consult with the council on these recommendations. These  
8 recommendations shall not change the terms and conditions of the  
9 permits issued by state and federal regulatory agencies.

10 SEC. 8. Section 85321 of the Water Code is amended to read:  
11 85321. ~~The BDCP~~ A new Delta water conveyance project for  
12 the purpose of exporting water shall include a transparent, ~~real-time~~  
13 real-time, annual, and long-term operational decisionmaking  
14 process in which fishery agencies ensure that applicable biological  
15 performance measures are achieved in a timely manner with respect  
16 to water system operations.